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10/024,619	12/21/2001	Francis Pruche	05725.0985-00	3953

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EXAMINER
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DANIELS MENDEZ, PHYLLIS A

ART UNIT	PAPER NUMBER
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3629

DATE MAILED: 03/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/024,619

Applicant(s)

PRUCHE ET AL.

Examiner

Phyllis A. Daniels-Mendez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 October 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 03/10/2003.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Priority***

A provisional application filed by the inventor on 10/01/2001 (US Patent# 60325559). The effective filing date that will be used for each claim in this application will be determined by the provisional application.

1. If applicant desires to claim the benefit of a prior-filed application under 35 U.S.C. 120 a specific reference to the prior-filed application in compliance with 37 CFR 1.78(a) must be included in the first sentence(s) of the specification following the title or in an application data sheet. For benefit claims under 35 U.S.C. 120, 121 or 365(c), the reference must include the relationship (i.e., continuation, divisional, or continuation-in-part) of the applications.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 12 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter, which was not

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described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The applicant discloses in claim 12 that tracking includes collecting a series of data points to form a curve and calculating an area under the curve. The applicant does not go into any detail as to how this will be performed and how to perform it on a consistent basis achieving the same result.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

4. Claims 1-50 recites the limitation "typical human eye, typical individual, etc." in claim 1, line 6 and claim 1, line 4. There is insufficient antecedent basis for this limitation in the claim.

Regarding claims 1, 2, 5, 6, 8, 9, 10, 14, 15, 21, 22-24, 28, 29 and 32, 34, 35, 36, 39, 40, 43, 44-46 the phrase(s) "typical individual, typical human eye" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d). What does the applicant mean by, "typical individual and typical human eye?"

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-10, 12-18, 21-25, 28-42 and 43-46 are rejected under 35 U.S.C. 102(e) as being anticipated by **Hillebrand et al.** (US Patent# 6,571,003)

For the purposes of examination the examiner has chosen skin for the evaluation of the claims.

**Claim 1:** A method of tracking progress of a beauty treatment regimen, the method comprising:

- a. prescribing the beauty treatment regimen to an individual, the regimen for altering a condition of at least one of skin, hair, teeth and nails, wherein a typical individual undergoing the beauty treatment regimen exhibits at least one indicia of progress, the indicia of progress being substantially imperceptible to a typical human eye in at least one stage of the beauty treatment regimen (Prescribing– C1, L 27-30/Altering C1, L 30-33);
- b. tracking the indicia of progress with respect to the individual; and

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c. (Tracking: C5, L 47-67, C6, L 1-8) advising the individual about positive progress in the beauty treatment regimen (C11, L 22-25).

**Claim 2:** The method of claim 1, further including encouraging the individual to continue the beauty treatment regimen regardless of whether the positive progress is substantially imperceptible to the typical human eye (C12, L 35-38).

**Claim 3:** The method of claim 1, further including advising the individual about a synergy of an additional treatment for use with the prescribed beauty treatment regimen (C12, L 28-32).

**Claim 4:** The method of claim 3, wherein the prescribed beauty treatment regimen includes a wrinkle treatment and the additional treatment is an elasticity treatment (C8, L 4-6).

**Claim 5:** The method of claim 3, wherein advising the individual about a synergy occurs when the indicia of progress is below a desired threshold (C11, L 25-27).

**Claim 6:** The method of claim 1, further including altering the beauty treatment regimen when the indicia of progress is below a desired threshold (C11, L 26-27).

**Claim 7:** The method of claim 1, wherein tracking involves the use of a image capture device (C1, L 44-45).

**Claim 8:** The method of claim 1, wherein tracking includes auto-evaluation by the individual (C5, L43-45).

**Claim 9:** The method of claim 1, wherein tracking includes directing the individual to conduct at least a portion of at least one self-test, and directing the

individual to record a result of the at least a portion of at least one self-test (C7, L65 thru C8, L11).

**Claim 10:** The method of claim 9, wherein the at least one self-test is a test of at least one of elasticity, oiliness, pH, texture, color, and pigmentation of at least one of the individual's skin, hair, teeth, and nails (C8, L 4-6).

**Claim 12:** The method of claim 1 wherein tracking includes collecting a series of data points to form a curve and calculating an area under the curve (C6, L 1-4).

**Claim 13:** The method of claim 1, wherein the beauty treatment regimen includes at least one of a treatment for wrinkle reduction, anti-aging, elasticity improvement, enhanced coloration, improved clarity, skin blemish removal, and freckle reduction (C4, L 32-36).

**Claim 14:** The method of claim 1, further including, conducting over a network at least a portion of a beauty analysis on the individual prior to prescribing (C4, L27-29).

**Claim 15:** The method of claim 14, wherein during the beauty analysis, the individual is instructed to conduct at least a portion of at least one self-test, and to electronically report a result of the at least a portion of at least one self-test (C4, L61-62/Electronic Rpt: C5, L11-12).

**Claim 16:** The method of claim 1, wherein prescribing, tracking and advising are accomplished by providing the individual with computer-related product, and wherein the computer-related product is configured to perform at least a portion of the prescribing, tracking, and advising (C4, L3-4, C5, L34-38).

**Claim 17:** The method of claim 1, wherein at least a portion of prescribing, tracking and advising is accomplished using a network that is accessible by the individual (C6, L 6-8/ C10, L43-45).

**Claim 18:** The method of claim 1, wherein tracking includes obtaining a body condition image and magnifying the image (C7, L 33-35).

**Claim 21:** A method of tracking progress of a beauty treatment regimen, the method comprising:

- a. prescribing the beauty treatment regimen to an individual for altering a condition of at least one of skin, hair, teeth and nails, wherein a typical individual undergoing the beauty treatment regimen exhibits at least one indicia of progress, the indicia being substantially imperceptible to a typical human eye in at least one stage of the beauty treatment regimen (Prescribing— C1, L 27-30/Altering C1, L 30-33);
- b. tracking the indicia of progress with respect to the individual (Tracking: C5, L 47-67, C6, L 1-8);
- c. capturing at least two images of portions of the individual's body using an image capture device (C1, L53 & L59);
- d. comparing, using image processing, at least two images of portions of the individual's body to ascertain treatment effectiveness (C1, L 61-65); and
- e. advising the individual of information reflective of the treatment effectiveness (Advising: C11, L22-25).



**Claim 22:** The method of claim 21, wherein during image processing, wrinkles in a first image of portions of the individual's body are quantified, and compared with wrinkles quantified in a second image of portions of the individual's body (Choices: C10, L 62-64/ Comparison: C1, L 59-61).

**Claim 23:** The method of claim 21, wherein during image processing, coloration in a first image of portions of the individual's body is quantified, and compared with coloration in a second image of portions of the individual's body (Choices: C10, L 62-64/ Comparison: C1, L 59-61).

**Claim 24:** The method of claim 21, wherein during image processing, at least one of skin blemishes and freckles in a first image of portions of the individual's body are quantified, and compared with at least one of skin blemishes and freckles in a second image of portions of the individual's body (Choices: C10, L 62-64/ Comparison: C1, L 59-61).

**Claim 25:** The method of claim 21, wherein tracking includes obtaining a body condition image and magnifying the image (C5, L 28-30).

**Claim 28:** A system for tracking progress of a beauty treatment regimen, the system comprising;

- a. means for prescribing the beauty treatment regimen to an individual, the prescribing means for altering a condition of at least one of skin, hair, teeth and nails, wherein a typical individual undergoing the beauty treatment regimen exhibits at least one indicia of progress, the indicia of progress being

substantially imperceptible to a typical human eye in at least one stage of the beauty treatment regimen;

b. means for tracking the indicia of progress with respect to the individual (Tracking: C5, L 47-67, C6, L 1-8); and

c. means for advising the individual about positive progress in the beauty treatment regimen (C11, L 22-25).

**Claim 29:** The system of claim 28, further including means for encouraging the individual to continue the beauty treatment regimen regardless of whether the positive progress is substantially imperceptible to the typical human eye (C12, L 35-38).

**Claim 30:** The system of claim 28, further including means for advising the individual about a predicted synergy of an additional treatment for use with the prescribed beauty treatment regimen (C12, L 28-32).

**Claim 31:** The system of claim 30, wherein the prescribed beauty treatment regimen includes a wrinkle treatment and the additional treatment is an elasticity treatment (C8, L 4-6).

**Claim 32:** The system of claim 30, wherein the advising means advises the individual about a predicted synergy occurs when the indicia of progress is below a desired threshold (C11, L 25-27).

**Claim 33:** The system of claim 28, further including means for altering the beauty treatment regimen when the indicia of progress is below a desired threshold (C11, L 26-27).

**Claim 34:** The system of claim 28, wherein the tracking means includes means for collecting information (C1, L 44-45).

**Claim 35:** The system of claim 28, wherein the tracking means includes means for directing the individual to conduct at least a portion of at least one self-test, and directing the individual to record a result of the at least a portion of at least one self-test (C7, L65 thru C8, L11).

**Claim 36:** The system of claim 35, wherein the at least one self-test is a test of at least one of elasticity, oiliness, pH, texture, color, and pigmentation of at least one of the individual's skin, hair, and nails (C8, L 4-6).

**Claim 37:** The system of claim 28, wherein the tracking means is configured to collect a series of data points to form a curve and calculates an area under the curve (C6, L 1-4).

**Claim 38:** The system of claim 28, wherein the beauty treatment regimen is at least one of a treatment for wrinkle reduction, anti-aging, elasticity improvement, enhanced coloration, improved clarity, skin blemish removal, and freckle reduction (C4, L32-36).

**Claim 39:** The system of claim 28, further including means for conducting over a network at least a portion of the beauty analysis on the individual prior to prescribing (C4, L27-29).

**Claim 40:** The system of claim 39, further including means for enabling electronic reporting of beauty information, and wherein during the beauty analysis, the individual is instructed to conduct at least a portion of at least one self-test, and to

electronically report a result of the at least a portion of at least one self-test using the electronic reporting means (C4, L61-62/Electronic Rpt: C5, L11-12).

**Claim 41:** The system of claim 28, wherein at least one of the prescribing, tracking and advising means are computer-related products provided to the individual (C4, L3-4, C5, L34-38).

**Claim 42:** The system of claim 28, wherein at least one of the prescribing, tracking and advising means includes a network (C6, L 6-8/ C10, L43-45).

**Claim 43:** A system of tracking progress of a beauty treatment regimen, the system comprising;

- a. means for prescribing the beauty treatment regimen to an individual, the(Prescribing— C1, L 27-30)
- b. prescribing means for altering a condition of at least one of skin, hair, teeth and nails, and wherein a typical individual undergoing the beauty treatment regimen exhibits at least one indicia of progress, the indicia being substantially imperceptible to a typical human eye in at least one stage of the beauty treatment regimen (Altering C1, L 30-33);
- c. means for tracking the indicia of progress with respect to the individual (Tracking: C5, L 47-67, C6, L 1-8); and
- d. information collection means for capturing at least two images of portions of the individual's body (C1, L53 & L59);
- e. means for comparing the at least two images of portions of the individual's body to ascertain treatment effectiveness (C1, L 61-65); and

- f. means for advising the individual of information reflective of the treatment effectiveness (Advising: C11, L22-25).

**Claim 44:** The system of claim 43, wherein the comparing means is configured to quantify differences in wrinkles between the at least two images (Choices: C10, L 62-64/ Comparison: C1, L 59-61).

**Claim 45:** The system of claim 43, wherein the comparing means is configured to quantify differences in coloration between the at least two images (Choices: C10, L 62-64/ Comparison: C1, L 59-61).

**Claim 46:** The system of claim 43, wherein the comparing means is configured to quantify differences in at least one of skin blemishes and freckles between the at least two images (Choices: C10, L 62-64/ Comparison: C1, L 59-61).

**Claim 48:** A method of performing a skin analysis, the method comprising:

- a. altering a chemical level in a subject's body (Altering C1, L 30-33);
- b. prescribing a beauty treatment regimen to the subject (Prescribing— C1, L 27-30);
- c. receiving measurements reflecting a period of time required for the chemical level to cross a threshold level (Tracking: C2, L 7-11);
- d. determining from at least the measured period of time, a projected effectiveness of the prescribed beauty treatment regimen (C1, L 61-65); and
- e. advising the subject of the projected effectiveness before an actual effectiveness is perceptible to the subject (Advising: C11, L22-25).

**Claim 49:** The method of claim 48, wherein altering includes adjusting a catalyst

level at a skin surface of the subject (C11, L 57-64).

**Claim 50:** The method of claim 48, wherein altering includes adjusting a phosphate level at a skin surface of the subject (C11, L 57-64).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Official Notice**

**Claims 11 and 47** are rejected under 35 U.S.C. 103 as being unpatentable over Hillebrand. Hillebrand teaches all of the elements claimed with the exception of reporting test results to a laboratory as the method of skin evaluation. The examiner takes Official Notice that the use of materials being sent out to a lab is old and well established in the health services field. The doctor or nurse will take samples of blood from a patient and send the samples out to the lab. Another example would be the gathering of forensic evidence from a crime scene. The samples are sent out to a lab for further processing. This is a widely known example of specimens being taken and then being sent to a lab within our society at the time of the present invention. Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify Hillebrand to include the step of using sample taking

materials and sending them out to a lab. One would have been motivated to use specimens to measure the amount of acne build-up on the skin.

**Claims 19 and 26** are rejected under 35 U.S.C. <sup>103</sup> as being unpatentable over Hillebrand. Hillebrand teaches all of the elements claimed with the exception of tracking individual progress through the use of a powder. The examiner takes Official Notice that the use of powder is old and well known in the field of forensic sciences. The criminal investigator will use a powder to expose something that is not visible to the naked eye, which would be a fingerprint. Fingerprints through the use of a powder are widely used in the field of forensics at the time of the present invention. Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify Hillebrand to include the use of a powder. One would have been motivated to use powder to expose the wrinkles that exist under the eye. Then anyone (i.e. layman, physician, technician) could observe visible wrinkles under the eyes.

7. **Claims 20 and 27** are rejected under 35 U.S.C. 103(a) as being unpatentable over Hillebrand et al. (US Patent# 6,571,003) in view of Epstein et al. (US Patent# 4,256,664).

**Claims 20 and 27** Hillebrand does not teach the use of a Woods lamp. This lamp also goes under the name of "black light". However, Epstein et al. does disclose the use of a Woods lamp (i.e. black light). Epstein discloses that immediately after the suncreening preparations applied to the fingers had dried, the fingers were observed under black light, which causes certain materials, which absorb ultraviolet light to

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fluoresce (C10, L 56-60). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to incorporate the use of a Woods lamp as taught by **Epstein** into the skin imaging and analysis system as taught by **Hillebrand**, because the invention is directed to a system for locating a plurality of visual skin defects associated with the face of a person (C1, L52-53).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phyllis A. Daniels-Mendez whose telephone number is 571-272-7657. The examiner can normally be reached on 8:00 a.m. - 4 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



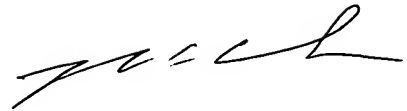
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